UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
BINGHAMTON DIVISION

DAVID McCLUNG,

Plaintiff,

v.

CREDIT ACCEPTANCE CORPORATION, and JOHN DOES 1-5,

Defendants.

Civil Action No. 3:14-cv-1365 (GLS/DEP)

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, without waiving any available objections or defenses, defendant Credit Acceptance Corporation ("Credit Acceptance"), respectfully files this Notice of Removal pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, and states as follows:

BACKGROUND

1. Plaintiff David McClung ("Plaintiff") commenced a civil action against Credit Acceptance in the Supreme Court of the State of New York, County of Delaware, Index No. 000901/2014 (the "State Court Action") by filing a Summons (the "Summons") and Complaint (the "Complaint") on or about September 26, 2014. True and correct copies of the Summons and Complaint are attached hereto as **Exhibit 1** and **Exhibit 2**, respectively.

2. The State Court Action arises out of Plaintiff's purchase of a used 2005 Nissan Xterra (the "Vehicle") from an automobile dealership, Kingston Nissan (the "Dealership"), pursuant to a Retail Installment Contract dated June 17, 2011 (the "Contract").

3. Upon execution of the Contract, all of the Dealership's right, title, and interest in and to the Contract and the Vehicle were assigned to Credit Acceptance, which indirectly financed Plaintiff's purchase of the Vehicle.

4. In the Complaint, Plaintiff alleges, *inter alia*, that Credit Acceptance engaged in certain improper conduct with respect to Guaranteed Asset Protection ("GAP") waiver insurance coverage purportedly paid for by Plaintiff and with respect to the information that Credit Acceptance furnished to credit reporting agencies. *See* Ex. 1, pp. 3-6.

5. As a result, Plaintiff seeks a judgment declaring that Credit Acceptance has violated, *inter alia*, New York State General Business Law § 349 and "the federal and state Fair Credit Reporting Acts." *See* Ex. 1, p. 10

THE NOTICE OF REMOVAL IS TIMELY

6. Credit Acceptance first received a copy of the Summons and Complaint when it was served on October 10, 2014 through the State of New York - Department of State, Division of Corporations.

7. Thus, this Notice of Removal has been filed within thirty (30) after receipt by Credit Acceptance and is therefore timely pursuant to 28 U.S.C. § 1446(b).

THIS COURT HAS ORIGINAL JURISDICTION UNDER 28 U.S.C. § 1331 AND SUPPLEMENTAL JURISDICTION UNDER 28 U.S.C. § 1367

8. It appears from the Complaint that, in addition to certain state law claims, Plaintiff alleges a claim against Credit Acceptance under the federal Fair Credit Reporting Act ("FCRA"). *See* Ex. 1, p. 10 (requesting judgment "declaring the actions of defendants in violation of . . . the federal and state Fair Credit Reporting Acts").

9. Accordingly, the State Court Action is a civil action "arising under the Constitution, laws, or treaties of the United States," over which this Court has original, federal question jurisdiction. *See* 28 U.S.C. § 1331; *see also* 15 U.S.C. § 1681p (noting that "[a]n action to enforce any liability created under [the FCRA] may be brought in any appropriate United States district court, without regard to the amount in controversy"); *Okolie v. Trans Union LLC*,

No. 99-CV-2687 (JG), 1999 WL 458165, at *1 (E.D.N.Y. June 30, 1999) (finding that Court had original jurisdiction over plaintiff's claim for "violation of the [FCRA]").

10. Additionally, even the state law claims alleged by Plaintiff in the Complaint present a federal question to the extent that they incorporate allegations of inaccurate credit reporting as the FCRA completely preempts state law claims related to credit reporting. *See* 15 U.S.C. § 1681t(b)(1)(F) ("No requirement or prohibition may be imposed under the laws of any State . . . relating to the responsibilities of persons who furnish information to consumer reporting agencies."); *Macpherson v. JPMorgan Chase Bank, N.A.*, 665 F.3d 45, 46-48 (2d Cir. 2011) (holding that both state common law claims and state statutory provisions related to credit reporting are preempted by the FCRA); *see also Beneficial Nat. Bank v. Anderson*, 539 U.S. 1, 8, 123 S. Ct. 2058, 2063, 156 L.Ed.2d 1 (2003) ("When the federal statute completely pre-empts the state-law cause of action, a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law. This claim is then removable under 28 U.S.C. § 1441(b), which authorizes any claim that 'arises under' federal law to be removed to federal court").

11. The state law claims alleged by Plaintiff in the Complaint are also so related to the FCRA claim "that they form part of the same case or controversy under Article III of the United States Constitution," and, therefore, to the extent that those claims do not present a federal question, this Court may still exercise supplemental jurisdiction over them. *See* 28 U.S.C. § 1367; *see also Okolie*, 1999 WL 458165, at *1 (finding that Court retained jurisdiction over entire matter where plaintiff's state law claims shared "a common nucleus of operative facts" with his federal FCRA claim).

ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED

12. Credit Acceptance, upon filing of this Notice of Removal in the Office of the Clerk of the U.S. District Court for the Northern District of New York, will, as required by 28 U.S.C. § 1446(d), file a copy of the Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of Delaware, and will serve a copy of the same upon Plaintiff.

13. True and correct copies of all pleadings and other papers filed in the State Court Action have been attached hereto as Exhibits 1 and 2.

14. This Notice of Removal is signed subject to Federal Rule of Civil Procedure 11 and is timely filed pursuant to 28 U.S.C. § 1446.

15. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446(b) because the U.S. District Court for the Northern District of New York embraces the place where the State Court Action was originally filed and is currently pending.

16. No previous application has been made for the relief requested herein.

WHEREFORE, Credit Acceptance, without waiving any available objections or defenses, respectfully submits that this Notice of Removal complies with the statutory removal requirements and respectfully requests that (i) the State Court Action be removed from the Supreme Court of New York, County of Delaware, to this Court; (ii) the matter proceed in this Court as a properly removed action; and (iii) Credit Acceptance be granted such other and further relief as this Court may deem just and proper.

Dated: New York, New York
November 10, 2014

Respectfully submitted,

SEIGER GFELLER LAURIE LLP

By: /s/ Matthew D. Sobolewski
Matthew D. Sobolewski

330 Madison Avenue, Sixth Floor
New York, New York 10017
Tel: (212) 653-8867
Fax: (646) 495-5006
msobolewski@sgllawgroup.com

Attorneys for Defendant Credit Acceptance Corporation